

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 05-412 (MJD-JJG)

Plaintiff,

v.

**REPORT
AND
RECOMMENDATION**

Juan Elodio-Benitez,

Defendant.

JEANNE J. GRAHAM, United States Magistrate Judge

The above-entitled matter came on for hearing before the undersigned Magistrate Judge of the District Court on January 18, 2006, on the pretrial motions of defendant Juan Elodio-Benitez. Richard A. Newberry, Jr., Assistant United States Attorney, appeared on behalf of the Government. Scott F. Tilsen, Federal Public Defender, appeared on behalf of Mr. Elodio-Benitez (Elodio-Benitez). This matter is scheduled to be tried before U.S. District Court Judge Michael J. Davis. The case has been referred to this Court for resolution of pretrial matters pursuant to 28 U.S.C. § 636 and Local Rule 72.1.

Elodio-Benitez has advanced two dispositive motions: a Motion to Suppress Statements (Doc. No. 12) and a Motion to Dismiss the Indictment (Doc. No. 16). Elodio-Benitez now represents that he is not proceeding with the motion to suppress, and thus the only outstanding matter is the motion to dismiss. Here Elodio-Benitez raises a collateral attack against his prior deportation, arguing he was denied a hearing in violation of due process. The Government counters with two documents. These documents are a notice from May 5, 2005, initialed and signed by Elodio-Benitez, in which he waived a deportation hearing; and another notice from May 19, 2005, which indicates that Elodio-Benitez was appointed counsel for his

deportation proceedings. The parties did not submit further evidence on this point. For purposes of the motion to dismiss, this Court finds that Elodio-Benitez properly received an opportunity for a hearing and that his prior deportation did not violate due process.

Being duly advised of all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT:**

1. Elodio-Benitez' Motion to Suppress Statements (Doc. No. 12) be **DENIED AS MOOT.**
2. Elodio-Benitez' Motion to Dismiss the Indictment (Doc. No. 16) be **DENIED.**

Dated this 25th day of January, 2006.

s/Jeanne J. Graham

JEANNE J. GRAHAM
United States Magistrate Judge

Pursuant to D. Minn. LR 72.2(b), any party may object to this Report and Recommendation by filing and serving specific, written objections by February 14, 2006. A party may respond to the objections within ten days after service. Any objections or responses filed under this rule shall not exceed 3,500 words. A District Judge shall make a de novo determination of those portions to which objection is made. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the United States Court of Appeals for the Eighth Circuit. Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed within ten days a complete transcript of the hearing.